IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 83 OF 2004

1. Shri Mucund Vithal Prabhu,
   alias Mucund Vithal
   Gaonkar, and

2. Shri Babu Vithal Prabhu,
   alias Laximan Vithal
   Prabhu, both r/o Usgaum. ... Appellants.

Versus

1. Shri Ramnath Vithu Gosavi,
   (since deceasd through his
   L/r's):
   1(a) (i) Rohidas Ramnath
   Gosavi,
   1(b)(ii) Dayanand Ramnath
   Gosavi, both r/o Usgaum,
   Goa,

2. Laximan Ganesh Gosavi, Usgaum,
   Ponda, Goa,

3. Pandurang Rajaram Maynath
   (expired) (since deceased through
   his L/r's):
   3(a) Datta Pandurang Gosavi
   (expired) (since deceased
   through his l/r's)
   3(a)(i) Smt. Dikshita Datta
   Gosavi (wife),
   3(a)(ii) Master Shail Datta
   Gosavi (son), both r/o
   Gosaviwada, Usgaum,
   Goa,
   3(b) Mrs. Geeta Ramesh
   Kalangutkar (daughter),

3(c) Ramesh Kalangutkar (son in law),]
both r/o Opp. Church, Assonora,
Bicholim Taluka,

4. Yeshwant Ganesh Gosavi,
Usgao, Ponda, Goa,

5. Tukaram Vithu Gosavi (expired),
(since deceased through his l/r's):
5(i) HinduTukaram Gosavi (wife),
5(ii) Priya Tukaram Gosavi (daughter),
5(iii) Silu Tukaram Gosavi (daughter),
5(iv) Sanju Tukaram Gosavi (son),
all r/o, Usgao, Ponda, Goa,

6. Subhash Vithu Gosavi, all r/o
Usgao, Ponda, Goa. ... Respondents.

Mrs. A. A. Agni, advocate for the appellants.

Mr. S. D. Lotlikar, Senior Advocate with Ms. S. Naik, advocate for the respondents.

CORAM : R. M. LODHA, J.

DATE : 17th August, 2005.

P.C.

Heard learned counsel for the appellants and learned counsel for the respondents.

2. Both the Courts have concurrently passed a decree of permanent injunction against the appellants/defendants for trespassing into the subject property bearing survey no.56/1 of the

village Usgaum. The defendants aggrieved by the concurrent judgment and decree have come up in Second Appeal. The contention of the learned counsel for the appellants is that a portion of survey no.56/1 consists of a portion of the defendants' property.

3. There appears to be no dispute that the survey no.56/1 ad measures 48,100 sq. mts. The defendants in written statement admitted that the property described under survey no.56/1 ad measures 48,100 sq. mt. However, the defendants seek to contend that matriz records pertaining to subject property show that survey no.56/1 admeasures 22,000 square meters only. The contention cannot be accepted. It is not in dispute that after the matriz records, the record of rights of the said land has been prepared and promulgated in accordance with the provisions of the Land Revenue Code. In the case of ***M/s. Deeksha Holding Ltd. vs. Smt. Sita Rama Naik Desai & Ors.*** [1998 (2) Goa L.T.443], it has been held that matriz records have presumptive value so long as record of rights is not prepared. Once the record of rights of the area is prepared in accordance with the provisions of the Land Revenue Code, the matriz entry is not of much value. The matriz

entry therefore, relied upon by the defendants in support of their claim cannot be of much help to the defendants' case.

4. The learned counsel for the appellants submitted that for want of specific finding by the Appeal Court on the issue of plaintiffs' ownership over the subject land, decree of permanent injunction could not have been maintained by the Appeal Court. The submission does not deserve to be accepted. If the plaintiffs proved that they were in possession of the subject property of survey no.56/1 they were entitled to the decree for permanent injunction. The Appeal Court recorded its finding in favour of the plaintiffs on the question of possession. As the plaintiffs' suit was a suit for perpetual injunction, the title of the parties was not of vital importance. The decree has been granted in favour of the plaintiffs based on possession. The findings are findings of fact and do not give rise to any substantial question of law.

5. The Second Appeal is, accordingly, dismissed in limine.

R. M. LOHDA, J.

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